

## Fishery Conservation and Management

§ 649.43

points, in the order stated, and the territorial sea:

Point	Latitude	Longitude
A .....	44°04' N.	67°19' W. and northward along the irregular U.S. - Canada Maritime Boundary to the territorial sea.
B .....	43°03' N.	70°00' W.
C .....	42°14' N.	70°00' W.
D .....	42°08' N.	69°55' W.
E .....	42°06' N.	70°04' W.

(2) *Area 2. Near-shore EEZ Waters of Southern New England.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and the territorial sea:

Point	Latitude	Longitude
E .....	42°06' N.	70°04' W.
D .....	42°08' N.	69°55' W.
F .....	41°10' N.	69°06' W.
G .....	40°46' N.	71°34' W.
H .....	41°06' N.	71°43' W.
I .....	41°05' N.	71°49' W.

(3) *Area 3. EEZ Offshore Waters.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and westerly of the U.S. - Canada Maritime Boundary:

Point	Latitude	Longitude
A .....	44°04' N.	67°19' W. and northward along the irregular U.S. - Canada Maritime Boundary to the territorial sea.
B .....	43°03' N.	70°00' W.
C .....	42°14' N.	70°00' W.
D .....	42°08' N.	69°55' W.
F .....	41°10' N.	69°06' W.
G .....	40°46' N.	71°34' W.
J .....	40°13' N.	72°44' W.
K .....	38°39' N.	73°24' W.
L .....	38°12' N.	73°55' W.
M .....	37°12' N.	74°44' W.
N .....	35°41' N.	75°10' W.
O .....	35°15' N.	75°28' W.

(4) *Area 4. Near-shore EEZ Waters of the Middle Atlantic.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and the territorial sea:

Point	Latitude	Longitude
I .....	41°05' N.	71°49' W.
H .....	41°06' N.	71°43' W.
G .....	40°46' N.	71°34' W.
J .....	40°13' N.	72°44' W.
K .....	38°39' N.	73°24' W.
L .....	38°12' N.	73°55' W.

Point	Latitude	Longitude
M .....	37°12' N.	74°44' W.
N .....	35°41' N.	75°10' W.
O .....	35°15' N.	75°28' W.

(c) *Effort Management Teams (EMT).*  
(1) The Council shall establish EMTs for each area specified in paragraph (b) of this section, for the purpose of making recommendations to the Council on management measures to achieve the objectives of the FMP.

(2) Members of each EMT shall be appointed by the Council, in consultation with appropriate states and NMFS. Members of the EMT shall consist of a group of technical representatives that serve on each EMT and a group of representatives from the lobster industry, based on their geographical affiliation with an EMT. The Council may decide the number of representatives and operating procedures of the EMTs.

(3) No later than January 20, 1995, each EMT shall report its recommendations for management measures for the stock rebuilding program for the area it represents to the Council.

### §649.43 First year framework specifications.

(a) On or before January 20, 1995, each EMT shall submit its recommendations for management measures for the area it represents to the Council. In developing these recommendations, the EMTs may consider and recommend additional restrictions or limitations on vessels participating in the lobster fishery according to the categories and guidelines contained in paragraph (b) of this section.

(b) After receiving the recommendations of the EMTs, the Council shall determine what management measures are necessary for each management area, in order to achieve the objectives of stock rebuilding specified in the FMP. For the management measures the Council determines are necessary to meet FMP objectives, the Council shall provide appropriate rationale and economic and biological analysis of the determinations. The Council shall make these determinations over the span of at least two Council meetings and provide the public with advance notice of, and opportunity to comment

on, the determinations and the analyses before making final recommendations to be submitted to NMFS. The Council's recommendation on necessary management measures may come from one or more of the following categories:

- (1) Minimum-size changes;
- (2) A maximum-size limit;
- (3) Trap limits;
- (4) Seasonal closures of one or more management areas;
- (5) Closed areas or zones within a management area;
- (6) Restrictions on allowable fishing time;
- (7) Restrictions on allowable catches;
- (8) Permitting restrictions;
- (9) Additional restrictions on gear;
- (10) Overfishing definition;
- (11) Limitations on participation in the fishery in accordance with the control date guidelines listed below. These guidelines will apply until a stock rebuilding program is established.

(i) It is the intent of the Council that in the event that a system of assigning fishing rights is developed as part of the FMP, such assignments shall be based upon historical levels of participation in the fishery prior to March 25, 1991, with consideration for recent investments that have not yet been reflected in measures of participation.

(ii) New or re-rigged vessels will be given consideration in the assignment of fishing rights if:

(A) They were under construction or re-rigging for directed lobster fishing as of March 25, 1991, as evidenced by written construction contracts, work orders, equipment purchases, or other evidence of substantial investment and intent to participate in the lobster fishery; and

(B) They possessed an American lobster permit and landed lobster prior to March 25, 1992.

(iii) The public is further notified that it is the intent of the Council that historical participation will transfer with a vessel, for transfers made after March 25, 1991, unless such transfer is accompanied by a written document indicating the agreement of both buyer and seller that any future fishing rights applicable to that vessel are not being transferred with the vessel.

(iv) The Council further intends that any system of assigning fishing rights will take into consideration the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights:

(A) The degree of economic dependence upon the lobster fishery including, but not limited to, the percentage of income derived from the lobster fishery;

(B) Extent of past participation in the lobster fishery; and

(C) Demonstration of intent prior to March 25, 1991, to re-enter the lobster fishery with a different vessel.

(12) Any other restrictions that the Council may designate for the purpose of reducing or controlling fishing mortality rates, except that an Individual Transferable Quota (ITQ) system would require a full FMP amendment.

(c) After developing necessary management measures and receiving public testimony, the Council shall make a recommendation to the Regional Director on or before July 20, 1995. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted, following their promulgation as a final rule.

(d) If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(1) If the Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule, based on the factors specified in paragraph (c) of this section, the action will be published in the FEDERAL REGISTER as a final rule; or

(2) If the Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the FEDERAL REGISTER; or

(3) If the Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(e) At any time, the Council may make other adjustments to management measures implemented under this part pursuant to the provisions in § 649.44.

(f) Nothing in this section is meant to diminish the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

**§ 649.44 Framework specifications.**

(a) Annually, upon request from the Council, the Regional Director will provide the Council with information of the status of the American lobster resource, based on the most recent stock assessment report.

(b) The Council and Atlantic States Fisheries Commission, through consultation with the ASMFC Lobster Scientific Committee within the stock assessment process and with the EMTs, shall continue to monitor the effectiveness of the Stock Rebuilding Program and to ensure, to the extent possible,

that regional measures (within a Management Area) do not shift costs from one Management Area to another.

(c) In addition, the EMTs, on at least an annual basis, shall determine the extent to which the objectives of the FMP are being achieved and shall make recommendations to the Council for further management actions, if required.

(d) After receiving the EMT recommendations, the Council shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the FMP. After considering the EMT's recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to, and at, the second Council meeting. The Council's recommendation on adjustments or additions to management measures may come from one or more of the following categories:

- (1) Minimum-size changes;
- (2) A maximum-size limit;
- (3) Trap limits;
- (4) Seasonal closures of one or more management areas;
- (5) Closed areas or zones within a management area;
- (6) Restrictions on allowable fishing time;
- (7) Restrictions on allowable catches;
- (8) Permitting restrictions;
- (9) Additional restrictions on gear;
- (10) Overfishing definition;
- (11) Limitations on participation in the fishery in accordance with the control date guidelines contained in § 649.44(b)(11). These guidelines will apply until a stock rebuilding program is established.
- (12) Any other restrictions which the Council may designate for the purpose